

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DWIGHT DURAN *et al.*,

Plaintiffs,

vs.

Civ. No. 77-721 KK/SCY

MICHELLE LUJAN GRISHAM *et al.*,

Defendants.

ORDER DENYING APPLICATION TO PROCEED
IN FORMA PAUPERIS ON APPEAL

THIS MATTER is before the Court on Patricio David Ortegon’s Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 3222) (“Application”), filed April 1, 2020, and his [Response to] Order to Cure Deficiencies (Doc. 3237) (“Response”), filed May 18, 2020. On March 6, 2020, Mr. Ortegon filed a Notice of Appeal (Doc. 3214) from the Court’s Order Granting Final Approval of Second Revised Settlement Agreement (Doc. 3205), in which the Court overruled Mr. Ortegon’s objections to the parties’ Second Revised Settlement Agreement. Though filed as an application to proceed *in forma pauperis* “in District Court,” (Doc. 3222 at 1), the Court construes Mr. Ortegon’s Application as seeking leave to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit. As explained below, the Court FINDS that the Application is not well taken and should be DENIED.

Mr. Ortegon filed his Application pursuant to Federal Rule of Appellate Procedure 24. In pertinent part, Rule 24 requires a party seeking leave to proceed *in forma pauperis* on appeal to submit an affidavit that “states the issues that the party intends to present on appeal.” Fed. R. App. P. 24(a)(1)(C). This statement allows the Court to determine, as it must, whether the appeal is taken in good faith. *See* 28 U.S.C. § 1915(a)(3). In this regard, the burden is on the party seeking

in forma pauperis status to show that he is raising reasoned and nonfrivolous issues on appeal. *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991); *see Watkins v. Leyba*, 543 F.3d 624, 627 (10th Cir. 2008) (to be allowed to proceed *in forma pauperis* on appeal, appellant must present “a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal”).

Neither Mr. Ortegon’s Notice of Appeal nor his Application identifies any issue that he intends to raise on appeal. (*See* Docs. 3214, 3222.) Moreover, his Response is similarly lacking, even though the Court in its Order to Cure Deficiencies specifically informed Mr. Ortegon that his Application was deficient because he had failed to “state the issue(s) that he intends to present on appeal” and gave him 30 days to cure the deficiency. (Doc. 3223 at 2-3.) In short, Mr. Ortegon has never informed the Court of the issues that he intends to raise on appeal, much less presented a reasoned, nonfrivolous argument on the law and facts in support of any such issues. *Watkins*, 543 F.3d at 627; Fed. R. App. P. 24(a)(1)(C). As such, Mr. Ortegon’s Application fails to comply with Rule 24 and does not allow the Court to ascertain whether his appeal is taken in good faith. The Court must therefore deny his Application.

Pursuant to Federal Rule of Appellate Procedure 24(a)(4), the Court will direct the Clerk to notify the appellate court of this Court’s denial of Mr. Ortegon’s Application. The Court hereby advises Mr. Ortegon that he may file a motion for leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit within 30 days after service of this Order. Fed. R. App. P. 24(a)(5).

IT IS THEREFORE ORDERED that Patricio David Ortegon’s Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 3222) is DENIED. The Court DIRECTS the Clerk to notify the United States Court of Appeals for the Tenth Circuit of this denial.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Kirtan Khalsa", written over a horizontal line.

KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE
Presiding by Consent